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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,098	02/25/2004	Thomas Mohr	Q79903	8800
23373	7590	08/18/2008	EXAMINER	
SUGHRUE MION, PLLC			NGUYEN, BRIAN D	
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20037			2616	
			MAIL DATE	DELIVERY MODE
			08/18/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/785,098	MOHR, THOMAS	
	<b>Examiner</b>	<b>Art Unit</b>	
	BRIAN D. NGUYEN	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 July 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 25 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansingh et al (6,751,660) in view of Fink et al (7,043,633).

Regarding claim 1, Mansingh discloses a network monitor (114) for monitoring traffic on a dedicated packet-switched data network (see Ethernet network in col. 3, lines 56-58) connecting network controllers controlling associated network elements (120) of an automatically switched optical transport network (see network in figure 1); the network controllers advertise the network topology and status (see col. 4, lines 30-32 and 66-67) of the automatically switched optical network (network in figure 1) in the dedicated packet switched data network (non-SONET out-of-band control channels, e.g. via Ethernet in col. 3, lines 57-58) and the monitor receives the network topology and status information transmitted in the dedicated packet switched data network (Ethernet) from the controllers (see col. 6, lines 8-14) and displays these information to a user (see col. 5, lines 17-23 and col. 6, lines 14-16).

Mansingh does not specifically disclose passively monitoring the traffic, filter protocol frames of a predefined protocol type by which the network controllers advertise the network topology and status and extract from the filtered protocol frames information about the topology and status of the transport network. However, passively monitoring the traffic to extract the topology and

status information is well known in the art. Fink discloses this well-known feature 9 (see col. 2, lines 37-47). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to passively monitor the traffic and extract the information as taught by Fink in the system of Mansingh in order to use the information for managing the network.

Regarding claim 2, Mansingh does not specifically disclose a sniffer. However, Fink discloses the use of a sniffer (see col. 2, line 38). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the sniffer as taught by Fink in the system of Mansingh in order to capture data from the network connection.

Regarding claim 3, Mansingh further discloses the predefined protocol type is OSPF (see col. 4, lines 23-25).

Regarding claims 4 and 5, Mansingh discloses the network includes a plurality of domains (see col. 5, lines 52-54) and displaying the topology and status information graphically to a user but does not specifically disclose the use of small circles, large circles, and colors to describe network elements or states. However, to use circles, colors or any other symbols to describe a network element or status is a matter of design choice. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use circles and colors in order to distinguish one element from the others.

Regarding claim 6, Mansingh further discloses a command line interface to one of the network controllers adapted to program the connected network controller to broadcast a request for an immediate update of topology and status information and/or to program the network

controller to set up a new connection and/or perform other configuration changes in the automatically switched optical transport network (see col. 7, lines 29-67).

Regarding claim 8, claim 8 is a method claim that has substantially all the limitations of the respective apparatus claim 1. Therefore, it is subject to the same rejection.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mansingh in view of Fink as applied to claim 1 above, and further in view of Clemm et al (7,126,941).

Regarding claim 7, Mansingh discloses all the claimed subject matter as described in previous paragraph except for detecting a mismatch. However detecting a configuration mismatch is well known in the art. Clemm discloses detecting configuration mismatch (see col. 2, lines 12-14). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to detect the configuration mismatch as taught by Clemm in the system of Mansingh in order to meet specific needs.

### ***Response to Arguments***

4. Applicant's arguments filed 16/25/98 have been fully considered but they are not persuasive.

The applicant argues that Mansingh teaches a network management system that queries information stored in data bases of different nodes. Thus, the data is not directly obtained from the data traffic on the network but indirectly from a database that is created by a software program that controls the network connections of the network elements. This argument is not persuasive because the network management system is connected to the network where the network topology and status information is transmitting, the network management system will

extract the information from the network no matter where the information is coming from. The applicant further argues that in Fink, the control information is transmitted via the same network which it is controlling. This argument is not persuasive because sniffers are used to passively monitor traffic on a network and extract information from the network no matter if the control information is transmitted via the same network which it is controlling or not. The applicant further argues that even if one of ordinary skill in the art would combine Mansingh and Fink, the sniffer would monitor the traffic on the optical transport network to extract topology information about this same optical transport network, and therefore would not monitor a dedicated packet network to extract topology information about a physically distinct optical network as required by the claimed invention. This argument is not persuasive because when a sniffer is connected to an optical transport network, the sniffer will monitor and extract needed information from the transport network and when the sniffer is connected to a dedicated packet network, the sniffer will monitor and extract needed information from the packet network. The difference between the two networks is the protocols used in the networks. The sniffer should use the same protocol as the one used in the network it is monitoring.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN D. NGUYEN whose telephone number is (571)272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on (571) 272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

8/15/08

/Brian D Nguyen/  
Primary Examiner, Art Unit 2616